



# Asylum Policy: Religious Persecution

Presented by

**Ken Starr,  
Kimberlee Colby,  
& Thomas Farr**

## *Ting Xue v. Sessions*

No. 16-\_\_\_\_

In the  
Supreme Court of the United States

TING XUE,  
Petitioner,

v.

JEFFERSON B. SESSIONS III,  
Respondent.

On Petition for a Writ of Certiorari  
to the United States Court of Appeals  
for the Tenth Circuit

PETITION FOR A WRIT OF CERTIORARI

STUART BANNER UCLA SCHOOL OF LAW SUPREME COURT CLINIC 405 Hilgard Ave. Los Angeles, CA 90095	FRED A. ROWLEY, JR. Counsel of Record MADE R. YORALEN MUNGER, TOLLES & OLSON LLP 350 S. Grand Ave. 49th Floor Los Angeles, CA 90071 (213) 683-9100 fred.rowley@mta.com
JOSHUA PATASHNIK MUNGER, TOLLES & OLSON LLP 360 Mission St. 27th Floor San Francisco, CA 94105	

- For attending an unregistered house church, Xue was
  - arrested
  - beaten
  - jailed for three days and four nights
  - forced to pay a major fine
  - required to take reeducation classes, and
  - warned not to attend illegal church meetings.
- The DJ credited his testimony but denied his asylum petition, saying his fears of future persecution **"do[] not amount to more than a restriction on [his] liberty and thus do[] not rise to the level of persecution."**
- The BIA affirmed.







## Pre-Constantine Rome Confirms this Principle

*Muhur v. Kurnath*, 355 F.3d 960 (2004)

355 F.3d 960  
United States Court of Appeals,  
Seventh Circuit.  
Yordanos MUKUR, Petitioner,  
v.  
John ASHCROFT, Attorney General  
of the United States, Respondent.  
No. 00-3399.  
Argued Dec. 3, 2003.  
Decided Jan. 20, 2004.

**Background:** Applicant petitioned for review on order of the Board of Immigration Appeals (BIA) ruling for her removal following the denial of her request for asylum.

**Holding:** The Court of Appeals, **Reener**, Circuit Judge, holds that an applicant is entitled to claim asylum on the basis of religious persecution if applicants could escape the action of the persecutors by concealing their religion.

**Position granted:**

**Amici and Law Firms:**

**998** Herbert A. Scharf, Esq., **Edith Ann**, Esq., **Michael Scharf, Esq.**, **Michael Scharf, Esq.**, **George P. Karamolis**, Department of Homeland Security, Office of the Director, Chicago, IL, **John C. Cunningham**, Esq., Department of Justice, Washington, DC, for Respondent.

**Before** PLAUIN, Chief Judge, and **POWNER** and **WILLIAMS**, Circuit Judges.

**Opinion:**  
**POWNER**, Circuit Judge.

**"Christians living in the Roman Empire before Constantine made Christianity the empire's official religion faced little risk of being thrown to the lions if they practiced their religion in secret; *it doesn't follow* that Rome did not persecute Christians, or that a Christian who failed to conceal his faith would be acting 'unreasonably.'"**

*Muhur*, 355 F.3d at 960 (emphasis added).



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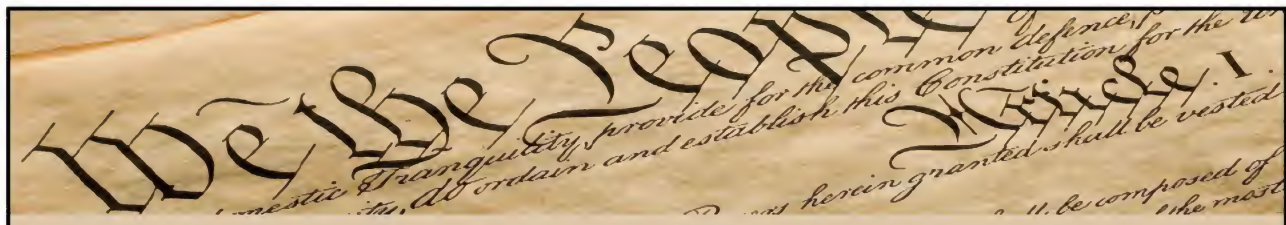
**"One aim of persecuting a religion is to drive its adherents underground in the hope that their beliefs will not infect the remaining population."**

*Muhur*, 355 F.3d at 961.

- The same rationale that drove pre-Constantine Rome undergirds China's policy towards Christianity and Falun Gong and is pervasive world-wide.



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## The First Amendment and the Free Exercise of Religion

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...”

U.S. Const., Amend. 1

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### RFRA and RLUIPA Interpretation of Religious Exercise

“The term ‘religious exercise’ includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.”

42. U.S.C. § 2000cc-5 (2012)

- Both statutes **require** sincerity—thus, sham claims must be weeded out at the outset.





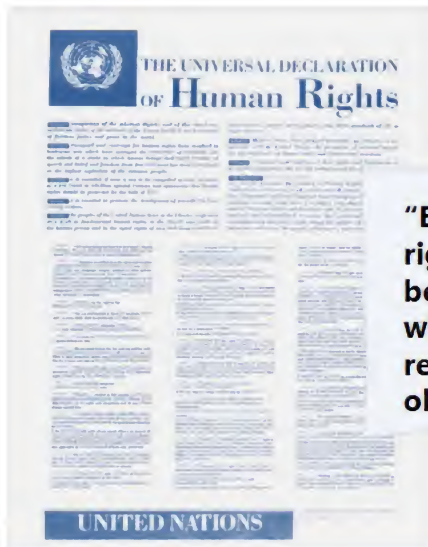
## International Norms Reject the Distinction between Belief and Practice

- The United Nations has long accepted the principle that religious beliefs are not separate from religious practice.



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## International Norms Reject the Distinction between Belief and Practice



- Universal Declaration of Human Rights, art. 18 (1948):

**"Everyone has the right to freedom of ... religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."**

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## World of Faith and Freedom

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- Advancing religious freedom successfully in our foreign policy can help victims of religious persecution abroad *and* increase the security of the American people.